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2 STATE BAR OF ARIZONA
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5 IN THE SUPREME COURT
6 STATE OF ARIZONA

7 PETITION TO ADOPT NEW RULE
8 32.10, ARIZONA RULES OF
9 CRIMINAL PROCEDURE, AND
RENUMBER PRESENT RULE

Supreme Court No. R-10-0010

**Comment of the State Bar of
Arizona on Petition to Adopt New
Rule 32.10, Arizona Rules of
Criminal Procedure, and
Renumber Present Rule**

12 The State Bar of Arizona supports the petition. The United States
13 Constitution forbids the execution of (1) persons who are under the age of
14 eighteen at the time of the criminal offense and (2) the execution of the
15 mentally retarded. As to the latter, the determination of mental retardation is
16 fluid. Thus, appellate counsel in a capital case has the responsibility of
17 ensuring that a defendant found competent to stand trial remains so throughout
18 the proceedings, including direct appeal, post-conviction procedures (governed
19 by Rule 32, Ariz. R. Crim. P., in Arizona), and on capital *habeas corpus*
20 proceedings brought in the District and Circuit Courts of the United States.

21 The Arizona Supreme Court must consider all issues raised on direct
22 appeal in a capital case. However, where the death sentence is affirmed on
23 direct appeal, the capital defendant then seeks relief in state post-conviction
24 proceedings pursuant to Rule 32. These proceedings are brought before, and
25 decided by, the trial judge. Where the petition for post-conviction relief is
denied by the trial judge, the petitioner must seek relief by way of special

1 action. However, such review is discretionary with the reviewing court. The
2 proposed rule change compels the reviewing court to accept jurisdiction on a
3 claim of mental retardation, and similarly compels a ruling on the merits. A
4 speedy determination of this issue in post-conviction proceedings serves the
5 interests of both the State and the convicted defendant, as well as preserves the
6 issue for subsequent *habeas corpus* review by the United States District Court
7 and the Ninth Circuit Court of Appeals.

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9 RESPECTFULLY SUBMITTED this 11th day of May, 2010.

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11 
12 John A. Furlong
General Counsel

13 Electronic copy filed with the
14 Clerk of the Supreme Court of
15 Arizona this 11th day of May, 2010,

16 And a copy was mailed to:
17 Donna Hallam, Staff Attorney
18 Arizona Supreme Court
1501 West Washington, Suite 445
Phoenix, AZ 85007

19 this 11th day of May, 2010,

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21 By: Kathleen Lundgren
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